

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Telecommunications Carriers Eligible to)	WC Docket No. 09-197
Receive Universal Service Support)	
)	
TIME WARNER CABLE, INC.)	
)	
Petition for Forbearance)	
)	

REPLY COMMENTS OF THE SOUTH CAROLINA TELEPHONE COALITION

The South Carolina Telephone Coalition (“SCTC”),¹ by its attorneys, respectfully submits these Reply Comments, pursuant to DA 12-1920 issued November 30, 2012 in the above captioned proceeding. SCTC opposes the Petition for Forbearance filed by Time Warner Cable, Inc. (“TWC”) on November 13, 2012, in this proceeding. SCTC supports the comments filed by the New York State Telecommunications Association, Inc. (“NYSTA”) on behalf of its smaller rural Incumbent Local Exchange Carrier (“ILEC”) members, and by the Telecommunications

¹ The South Carolina Telephone Coalition is a group of twenty-one rural incumbent local exchange carriers (“ILECs”) collectively providing telecommunications services throughout the State of South Carolina. Each of the Coalition member companies is a rural telephone company as defined in 47 U.S.C. § 153(37). SCTC members are Bluffton Telephone Company, Inc., Chesnee Telephone Company, Chester Telephone Company, d/b/a TruVista Communications, Farmers Telephone Cooperative, Inc., Ft. Mill Telephone Company, d/b/a Comporium Communications, Hargray Telephone Company, Inc., Home Telephone Company, Inc., Horry Telephone Cooperative, Inc., Lancaster Telephone Company, d/b/a Comporium Communications, Lockhart Telephone Company, d/b/a TruVista Communications, McClellanville Telephone Company, Norway Telephone Company, Palmetto Rural Telephone Cooperative, Inc., Piedmont Rural Telephone Cooperative, Inc., PBT Telecom, d/b/a Comporium Communications, Ridgeway Telephone Company, d/b/a TruVista Communications, Rock Hill Telephone Company, d/b/a Comporium Communications, Sandhill Telephone Cooperative, Inc., St. Stephen Telephone Company, West Carolina Rural Telephone Cooperative, Inc., and Williston Telephone Company

Association of Maine (“TAM”). Specifically, SCTC shares the concerns of TAM and NYSTA that TWC has failed to provide the necessary basis for its requested relief under 47 U.S.C. § 160,² that the relief requested by TWC is fundamentally different from the relief previously granted by the Federal Communications Commission (“Commission”) to certain wireless providers last year,³ that TWC’s petition is premature,⁴ and that granting the petition would not serve the public interest.⁵

TWC’s Petition is so vague that it cannot be determined whether it would impact companies in South Carolina. Worse yet, whether or not it impacts companies in South Carolina could change depending on how TWC structures its operations in the future. For example, TWC seeks forbearance “on behalf of itself and any subsidiaries that operate, or may operate, as local exchange carriers,” in certain areas of New York and “those areas in other states in which TWC may seek designation as an ETC from the relevant state commission pursuant to Section 214(e)(2) of the Act.”⁶ Currently, there is a TWC subsidiary operating in rural areas of South Carolina whose franchised area encompasses the entire study areas of certain rural local

² See NYSTA Comments.

³ See *TAM Comments* at p. 2.

⁴ See, e.g., NYSTA Comments at p. 5 (“The eligible TWC Subs should be disclosed and evidence must be provided to demonstrate that each entity is generally qualified to seek ETC designation so that the FCC and all parties know the extent of the relief being requested and whether the factual determinations required under Section 160 of the Act can be made for the applicant”), and pp. 6-7 (pointing out the state commission’s rightful and statutorily-preserved role of designating ETCs).

⁵ See NYSTA Comments at p. 8; TAM Comments at p. 1 (denying the petition will promote the goals of universal service by encouraging TWC to expand its service to currently unserved individuals) and p. 3 (without knowing TWC’s cost of providing voice service, there is no way to determine whether the full Lifeline credit given to customers would offset the cost or simply be a windfall for TWC).

⁶ TWC Petition for Forbearance, Appendix A.

exchange companies.⁷ However, if TWC were to create a new subsidiary to operate in South Carolina, or to change the franchised service area of its current subsidiary, South Carolina could be impacted. TWC's petition is simply too vague and speculative to determine the scope of the requested relief and, therefore, the petition should be denied.⁸

Perhaps an even more fundamental flaw in TWC's Petition is that, in failing to specify which entities and states are potentially at issue, it has failed to demonstrate that it is entitled to seek relief under 47 U.S.C. § 160 in the first place. TWC requests relief "on behalf of itself and any subsidiaries that operate, or may operate, as local exchange carriers."⁹ Section 160 permits *telecommunications carriers* to petition the Commission, and allows the Commission to forbear from applying certain regulations or provisions to *telecommunications carriers* or *telecommunications services*. TWC apparently is not a telecommunications carrier and does not claim to be one. There is no way to determine whether TWC's subsidiaries are telecommunications carriers because TWC has not disclosed who those subsidiaries may be and, in fact, appears to be asking for relief for entities that may not even exist but may be created in the future.

There has been some confusion surrounding whether TWC's *existing* operating subsidiaries are telecommunications carriers in some states, let alone any potential future subsidiaries, and whether or not the retail VoIP service offered by TWC and its subsidiaries is a "telecommunications service." For example, in California, TWC successfully argued that the

⁷ See, e.g., SCPSC Order No. 2009-356(A) in Docket Nos. 2008-325-C through 2008-329-C (June 11, 2009).

⁸ See *NTCH, Inc. and Cricket Communications, Inc.*, Order, 26 FCC Rcd 13723 (2011) ("*NTCH Order*") at ¶ 9 ("[The Commission's] ability to analyze a petition for forbearance is highly dependent on knowing the exact scope of the requested forbearance").

⁹ TWC Petition for Forbearance, Appendix A.

District Court should dismiss a class action lawsuit for “slamming” (i.e., changing a customer’s preferred telephone service provider without appropriate verification) on the grounds that Section 258(a) of the Act applies only to “telecommunications carriers,” and the question of whether a VoIP provider meets this definition has not been resolved by the Commission.¹⁰ Thus, TWC and its unnamed subsidiaries do not meet the basic threshold demonstration that they are telecommunications carriers entitled to seek relief under 47 U.S.C. § 160.

Contrary to TWC’s assertion,¹¹ the relief it is seeking is *not* the same forbearance relief that the Commission provided to NTCH, Inc. and Cricket Communications.¹² In the *NTCH Order*, the Commission was considering whether the requested forbearance should be granted to a “*mobile wireless* voice service provider that seeks a Lifeline-only ETC designation.”¹³ The Commission made clear that it was granting forbearance in the “limited circumstances” before it.¹⁴ Wireline and wireless service areas are fundamentally different.¹⁵ They have not developed under the same regulatory frameworks and their boundaries typically do not coincide. TWC is not a wireless carrier and is not seeking the same forbearance relief that was granted to NTCH, Inc. and Cricket Communications.

Even if the Commission were to find that TWC’s petition is properly before it, granting the petition is not in the public interest. As TAM pointed out in its comments, there is no way of

¹⁰ See *Clark v. Time Warner Cable*, 523 F.3d 1110, 1112-1113 (9th Cir. 2008).

¹¹ See TWC Petition for Forbearance at p. 1.

¹² See *NTCH Order*.

¹³ See, e.g., *NTCH Order* at ¶ 11, ¶ 12 (emphasis added).

¹⁴ See *id.* at ¶ 2 (“We conclude that forbearance in these limited circumstances furthers the Act’s and Commission’s goals[.]”); ¶ 9 (“[O]ur ability to analyze a petition for forbearance is highly dependent on knowing the exact scope of the requested forbearance.”).

¹⁵ See TAM Comments at p. 2.

knowing whether granting TWC's petition will result in a windfall to TWC.¹⁶ In fact, the entire cable business model of building out to more dense areas is antithetical to the notion of designating eligible telecommunications carriers to ensure the provision of service to customers who may not otherwise be served. The receipt of universal service funding by TWC under such circumstances, even though it may be targeted to low-income customers, would assist TWC in furthering its business model to serve limited areas, increasing the likelihood of harmful cream-skimming in rural telephone areas.

For the reasons stated herein, the South Carolina Telephone Coalition respectfully requests that the Commission deny TWC's Petition for Forbearance.

Respectfully submitted this 14th day of January, 2013.



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¹⁶ See TAM Comments at p. 3 (because TWC's costs are unknown, there is no way of knowing whether the full Lifeline credit given to customers, especially those customers who receive bundles of services from TWC, would offset costs or would simply be a windfall to TWC).